



# Texas State Board of Medical Examiners

333 Guadalupe • TOWER 3 • SUITE 610 • MAILING ADDRESS: P.O. Box 2018 • AUSTIN, TX 78768-2018

PHONE (512) 305-7010

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CORRESPONDENCE TO:  
MC-264

November 26, 1996

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Opinion Committee

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Opinion Committee

Honorable Dan Morales  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML39276

I.D. # 39276

Re: Opinion Request - Performance of Needle Electromyography (Needle EMG) Testing

Dear General Morales:

An Attorney General Opinion is respectfully requested under the authority of Section 22 of Article IV of the Texas Constitution and Sections 402.041 through 402.045 of the Texas Government Code. An opinion is requested concerning the authority of physical therapists who are not licensed as physicians by the Texas State Board of Medical Examiners (the Medical Board) to perform needle electromyography (needle EMG).

After extensive testimony and written input from various health care practitioners, organizations, and the general public, the Medical Board reached the following conclusions through a vote taken on August 17, 1996 with nine members in favor, one abstention, and the remaining members absent:

- (1) The performance of EMG testing is the practice of medicine, and may overlap with the scope of practice of appropriately trained and experienced physical therapists (Emphasis added).
- (2) Rule making is currently unnecessary.
- (3) The physician and physical therapist communities should be encouraged to promulgate guidance to promote the highest possible standard of care for such testing.

At the time of the decision, the Medical Board further directed that the matter of needle EMG testing and scope of practice be referred to the Office of the Attorney General for a legal opinion.

Honorable Dan Morales  
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Although the opinions on this subject vary, the two primary opposing views have been summed up in my letter of September 10, 1996 to Lieutenant Governor Bullock. This letter is enclosed as an attachment (Attachment A) to provide a brief historical overview and a simplified contrasting of the conflicting viewpoints. Also enclosed is a transcript of the most recent Medical Board proceedings on this subject. The transcript reflects the comments and discussion which immediately preceded the conclusions reached on August 17, 1996 (Attachment B). In addition, please find enclosed a statement summarizing the position taken by the Texas State Board of Physical Therapy Examiners and Executive Council of Physical Therapy and Occupational Therapy Examiners (Attachment C).

It is requested that the following questions be specifically addressed in an Attorney General Opinion:

- (1) Is the performance of needle electromyography the practice of medicine?
- (2) Does the performance of needle electromyography fall within the scope of practice for licensed physicians practicing in accordance with Texas law?
- (3) Does the performance of needle electromyography fall within the scope of practice for licensed physical therapists who are not licensed as physicians by the Medical Board, but who are otherwise practicing in accordance with Texas law?
- (4) Which agency or agencies of the State of Texas have the authority to limit or otherwise regulate the performance of needle EMG through rule making?
- (5) In light of your responses to the above questions, what are the limitations, if any, on rule making authority in regard to any agency or agencies with the power to limit or regulate the performance of needle EMG through creation of rules?

An opinion which addresses these questions is requested. If additional information is needed please contact either me or the Board's General Counsel, Tony Cobos.

Sincerely,



Bruce A. Levy, M.D., J.D.  
Executive Director

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**Honorable Dan Morales**  
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**xc: John Maline, Executive Director**  
**Texas Board of Physical Therapy Examiners and Executive Council**  
**of Physical Therapy and Occupational Therapy Examiners**

**Patte Kent, Executive Director**  
**Texas State Board of Chiropractic Examiners**



# Texas State Board of Medical Examiners

333 Guadalupe • Tower 3 • Suite 610 • MAILING ADDRESS: P.O. Box 2018 • AUSTIN, TX 78768-2018  
PHONE (512) 305-7010

September 10, 1996

The Honorable Bob Bullock  
Lieutenant Governor of Texas  
The Capitol, P.O. Box 12068  
Austin, Texas 78711-2068

Re: Needle Electromyography (Needle EMG)

Dear Governor Bullock:

Your letter to Mark C. Race, M.D. of August 1, 1996 has been received. It is hoped that this reply will be sufficient to explain the circumstances surrounding his concerns and the appropriate actions taken by this agency. At the time of Dr. Race's correspondence, the Texas State Board of Medical Examiners had already initiated informal information gathering on this subject. The most recent efforts of the Medical Board were in direct response to Dr. Race's prior request to this agency for a determination as to whether needle EMG constitutes the practice of medicine. During its inquiries into this subject, the Board also considered the need for rulemaking to address the various concerns related to the performance of this invasive diagnostic procedure. Dr. Race is mistaken when he notes in his letter to you that the draft rules were published in the Texas Register for possible adoption. The draft rules which he provided were merely being discussed as part of an effort to resolve conflicting concerns through negotiated rulemaking with support for parallel rulemaking by the Texas State Board of Physical Therapy Examiners. The draft provided to you had been revised several times as discussions were held with representatives of the physical therapy community. A number of physical therapists were apprehensive that rulemaking by the Medical Board would conflict with their scope of practice as set forth in their enabling statute and reenforced by rules previously passed by the Physical Therapy Board which specifically allow the performance of EMG by physical therapists. These rules were not published in the Texas Register for possible adoption and further action on this proposal has been halted due to a recent decision of the Medical Board.

Over the course of the last year, the Board has taken testimony and considered correspondence from various interested health care practitioners and organizations. The Board had previously considered this subject in 1993 including testimony and written submissions of interested parties; however, the Board at that time chose not to take action. Dr. Race's letter prompted the current Board to revisit these issues.

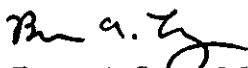
Attachment A

As information was obtained and points of view expressed, concerns were voiced that individuals other than specially trained physicians were performing the tests. Physical therapists, chiropractors, and physicians without specialized training have been performing EMG procedures in Texas and other states for many years. Due to the invasive and dynamic nature of this diagnostic procedure, there were those who expressed the view that the performance as well as the recording and interpretation of the results constituted the practice of medicine. The view was also expressed that delegation of the performance of such procedures should be prohibited or significantly restricted. The opposing point of view was most often raised by physical therapists who asserted that there have been no documented incidents of patient harm as a result of their performance of the tests and reporting of the results to physicians who then render a diagnosis in pursuit of an appropriate course of treatment. A number of physicians have argued that the dynamic nature of the test and the complexity of the raw data requires extensive specialized training in neurology. These physicians have also asserted that it is difficult to establish a clear nexus between poorly conducted EMG and adverse patient outcomes due to the numerous variables associated with the testing. Strong arguments were made on both sides of these issues.

After extensive review of the information available in 1993 and consideration of more recent written input and oral testimony, the Board confirmed at its most recent meeting of August 13-15, 1996 that needle EMG constitutes the practice of medicine. Dr. Race testified at this meeting and at earlier hearings on needle EMG. Various written submissions of Dr. Race and other physicians who shared similar points of view were also considered. Significant amounts of information were provided by organizations such as the American Association of Electrodiagnostic Medicine and the Texas Physical Therapy Association. To a great extent, these organizations represented the two most defined opposing views. Although the Medical Board acknowledged that needle EMG is the practice of medicine, the Board further concluded that the performance of needle EMG may overlap with the scope of practice for physical therapists and that rulemaking is not currently necessary. As part of its decision, the Medical Board encouraged physicians and physical therapists to promote the highest possible standards of care in the conducting of such procedures and encouraged the private sector to establish guidelines for practitioners engaged in EMG testing. In addition, as part of the determination by the Medical Board, Board staff was directed to seek an opinion from the Office of the Attorney General as to whether an overlap in scope of practice exists between physicians performing EMG testing and other health care providers so that the parameters of proper rulemaking can be more clearly defined. Board staff is currently drafting an opinion request.

A copy of the request for an Attorney General opinion will be routed to you. If you require additional information on this matter, transcripts of testimony and copies of written submissions are available. I am also available to answer any questions which you may have.

Respectfully,



Bruce A. Levy, M.D., J.D.  
Executive Director

xc:    **The Honorable Judith Zaffirini, Ph.D.**  
         **The Honorable David H. Cain**  
         **Mark C. Race, M.D.**  
         **Mr. John P. Maline, Executive Director, Texas State Board of Physical Therapy**  
         **Examiners**  
         **William H. Fleming, III, President, Texas State Board of Medical Examiners**